

December 1, 2010

Commissioner Mark Holsten
Minnesota Department of Natural Resources
Box 47
500 Lafayette Road
St. Paul, Minnesota 55155-4047

Re: *In the Matter of the Appeal of the Off-Highway Vehicle
Registration, Operation, and Trespass Citation No. 145136 Issued
to Robert Alan Kemp; OAH Docket No. 3-2000-21655-2*

Dear Commissioner Holsten:

The above-entitled matter came on for a prehearing telephone conference call at 3:30 p.m. on November 16, 2010. The Administrative Law Judge, Conservation Officer Colleen Adam, and Robert Kemp participated in the telephone conference. The parties agreed that no formal hearing would be needed and that the ALJ would make a recommendation in this matter based on the record created during the telephone conference.

The material facts are not disputed. On or about August 28, 2010, Mr. Kemp was driving his truck westbound on Highway 200 toward Walker, Minnesota. He was pulling a trailer that contained a Razor all-terrain vehicle (ATV) that he had purchased in early July 2010, and he was on the way to meet a friend to go four-wheeling near Akeley, Minnesota. The registration plate and sticker for the Razor were in his truck, but the plate was not attached to the ATV.¹ When his truck got a flat tire, he pulled off the road as far as he could. He removed the flat tire but could not get the spare tire on his truck to drop down. He called AAA for roadside assistance, but was advised that it might take more than an hour before someone could be there. Because he wanted to make sure a service station or dealership would still be open to fix the tire, he removed the ATV from the trailer, put the flat tire in the back of the ATV, and drove the ATV

¹ Testimony of Robert Kemp.

into town. He did not attach the registration plate to the ATV because he forgot about it due to “all the commotion” with the tire and the truck.²

On his return trip, Mr. Kemp was driving the ATV eastbound (with a new tire for his truck) about two miles outside of Walker on the south shoulder of the highway when Conservation Officer Colleen Adam passed him. She observed that traffic was backing up behind him as vehicles drove slowly to avoid the ATV on the shoulder. She turned around and stopped him. Officer Adam advised Mr. Kemp that driving on the shoulder of the highway was illegal and that he should be driving on the bottom outside slope of the ditch.³ She also advised him that he had failed to display the ATV plate and registration sticker. She did not cite him for driving on the road right-of-way, but did issue an administrative citation for failure to display the registration. Mr. Kemp took the ditch the rest of the way back to his truck.⁴

Conservation officers are authorized to issue a civil citation to a person who operates an ATV in violation of Minn. Stat. § 84.798, subd. 4 (2008).⁵ That statute provides as follows:

An off-road vehicle must display a registration sticker issued by the commissioner. If the vehicle is licensed as a motor vehicle, the registration sticker must be affixed on the upper left corner of the rear license plate. If the vehicle is not licensed as a motor vehicle, the owner shall provide a plate not less than four inches high and 7-1/2 inches wide. The plate must be attached to the rear of the vehicle at least 12 inches from the ground. The registration sticker must be affixed on the upper left corner of the plate. Plates and registration stickers must be maintained in a clean and legible condition.

Mr. Kemp does not dispute that he failed to display the registration sticker. He argues that, given the exigencies of the situation, Officer Adam should have exercised her discretion not to issue any citation to him. He stated he was not causing any trouble or flouting the law, he was simply trying to get his flat tire fixed.

Although the Administrative Law Judge is sympathetic to Mr. Kemp’s situation, there is no “exigent circumstances” exception to the requirement that registration stickers be displayed on ATVs. Officer Adam exercised her discretion in Mr. Kemp’s favor by choosing not to cite him for the more dangerous

² *Id.*

³ See Minn. Stat. § 84.928, subd. 1 (2008). All citations to Minnesota Statutes are to the 2008 edition.

⁴ Testimony of Colleen Adam.

⁵ Minn. Stat. § 84.775, subd. 1(a)(2).

conduct of driving the ATV on the shoulder of the highway. The Department has substantiated the violation, and the Administrative Law Judge accordingly recommends that the Commissioner affirm civil citation # 145136 and require Mr. Kemp to pay the \$100.00 fine.

I am closing our file in this matter and returning the record. Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner must wait at least five days after receipt of this recommendation before making a final decision. Within those five days, Mr. Kemp may comment on this recommendation. The Commissioner must send a copy of the final decision to Mr. Kemp. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision.

Sincerely,

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Encl.

cc: Col. Jim Konrad
C.O. Colleen Adam
Mr. Robert Kemp